

REMARKS

Claim Rejections under 35 U.S.C. § 103

Claims 1-6 and 8-9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,160,999 to Chheda et al. (hereinafter referred to as Chheda) in view of U.S. Published Application 2002/0114288 to Pittampalli et al. (hereinafter referred to as Pittampalli).

Claim 7 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chheda, in view of Pittampalli, and further in view of U.S. Published Application 2002/0097780 to Odenwalder et al. (hereinafter Odenwalder).

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that claims 1-6 and 8-9 are not rendered obvious by Chheda and/or Pittampalli, for the reasons and explanations set out below.

With respect to claim 1, Applicants respectfully submit that Chheda and Pittampalli do not teach or suggest all the limitations/elements of claim 1. In particular Chheda and Pittampalli do not teach disclose, or suggest the following element of claim 1:

“transmitting the pilot strength measurement message at a second transmit power level, wherein the second transmit power level is greater than the first transmit power level.”

Chheda discloses determining the best sectors for mobile unit transmission based upon the strength of pilot signals received by the mobile unit. (Col. 12, lines 9-11). The mobile unit reports the strength of the pilot signals by sending pilot strength measurement messages (PSMM) to the network. (Col. 12, lines 11-13). Alternatively, the mobile unit measures the strength of forward link transmissions received and relays the information to the network using a reverse link. (Col. 12, lines 16-19). This network receives this information periodically. (Col. 12, lines 20-21) If a mobile unit is connected to four sectors a determination may be made to transmit only on the forward links corresponding to the two best sectors. (Col. 12, lines 26-30). This may

be varied according to the operational scenario. Thus, Chheda allows the power level on each forward link to range from zero to full power, where full power equals the level determined by the power control algorithm. (Col. 12, lines 36-41). However, Chheda does not disclose or suggest transmitting the pilot strength measurement message at a second power level, where the second power level is greater than the first transmit power level. Specifically, Applicants are unable to find any disclosure, suggestion or motivation by Chheda for sending a second pilot strength measurement message, or sending that second message at a higher power level. Chheda is directed to controlling and managing the forward link power so as to conserve power and reduce noise. Chheda does not disclose or suggest in any way that multiple pilot strength measurement messages are sent and that the power level of the second message is greater than that of the first message.

Pittampalli discloses a method for preventing dropped calls. The mobile unit detects a break in the communication link, for example, after detecting a number of consecutive bad frames over the forward traffic channel from the current base station set. The wireless system also detects a possible dropped call after losing communication with the mobile unit. After an attempt to recover the call using the current set of base stations, the mobile unit determines a new set of base stations to use. This second set of base stations is based on information held by the mobile unit and the wireless communication system. The wireless system independently determines the new base station set based on the same information known to be in the possession of the mobile unit. This set may be determined based on the last PSMM sent by the mobile unit. (Par. 0019). Once the new base stations are independently established the wireless system signals the mobile unit to communicate using the predetermined channels. The wireless system transmits this information either over a predetermined channel known to the mobile unit or the wireless system can identify over a control channel known to the mobile unit which channels to use in communicating with the new base station. The mobile unit then receives signals from the new set of base stations. Once consecutive good frames are received, the mobile unit determines that the communications link is restored. The mobile unit sends this information to the wireless system. If consecutive good frames are not received the mobile unit determines that the call is to be dropped. (Par. 0021). However, Pittampalli does not disclose or suggest transmitting a second PSMM at a second power level. Specifically, Applicants are unable to find any disclosure, or

suggestion by Pittampalli for transmitting the pilot strength measurement message *at a second transmit power level, wherein the second transmit power level is greater than the first transmit power level*. There is no disclosure, suggestion, or motivation provided by Pittampalli to use a second PSMM at a higher power level to aid in call recovery.

Because Chheda and/or Pittampalli, either alone or in combination, do not teach or suggest all the limitations of claim 1, Applicants respectfully submit that claim 1 is not rendered obvious by Chheda and/or Pittampalli.

Applicants also submit that there is no motivation to combine the references because the references teach away from one another. Specifically, Chheda is directed toward managing forward link power control by transmitting at reduced power levels when there are sufficient base stations available. Pittampalli is directed to a method for preventing call drops by switching to a new set of base stations whenever a specified number of bad frames have been received by the mobile unit. It would not be logical to combine a method for controlling forward link power with a method that switches to base stations having strong signals to prevent call drops as the two methods are inherently in conflict. Furthermore, there is no reasonable expectation of success. The power needed to use the method of Pittampalli to prevent a call from being dropped requires selecting a base station with higher available power as determined by a PSMM, while the method of Chheda requires selecting a base station so as to use less power on the forward link. Therefore, there is no motivation to combine the references and no reasonable expectation of success, since the actions of the references conflict.

Additionally, Applicants submit that the Examiner's rejection is based on impermissible hind-sight reconstruction. The Examiner appears to have selected the method of Chheda for its use of PSMMs in wireless communication systems and then sought to overlay the call drop prevention method of Pittampalli to create the obviousness rejection. As explained above, the teachings of Chheda and Pittampalli cannot be combined as the Examiner suggests.

Applicants respectfully submit that the combination of Chheda and Pittampalli does not teach or suggest all the limitations of claim 1 and there is no motivation to combine the references for the reasons presented above.

Claim 2 is allowable as it depends from allowable claim 1.

Claim 8 and claim 9 are allowable for the same reasons as given above for claim 1 and claim 3 and are therefore, not rendered obvious by Chedda and/or Pattampalli.

Claim 4 is allowable for the same reasons as given above for claim 1. Neither Chedda nor Pattampalli separately or in combination teach or suggest *incrementing a transmit power prior to receiving a handoff direction message*. Because Chhedda and Pattampalli, either alone or in combination, do not teach or suggest all the limitations of amended claim 4, Applicants respectfully submit that claim 4 is not rendered obvious by Chhedda and/or Pattampalli.

Claim 5 is allowable as depending from allowable claim 4. Claim 5 is further allowable for the reasons given for claim 1, above.

Applicants respectfully submit that claim 7 is allowable as it depends from allowable claim 4. Furthermore, claim 7 is allowable for the same reasons claim 1 is allowable.

Odenwalder is directed to methods for generating optimized preambles for data packets. (Par. 0002). More specifically, Odenwalder is directed toward increasing data traffic capacity by optimizing the timing strategies used to transmit packets of data traffic. (Par. 0013). Odenwalder teaches detecting retransmissions by attaching a preamble to every subpacket and then sending the subpackets during optimal channel conditions. (Par. 0043). Applicants submit that this teaches away from Applicants' invention since call recovery occurs only during poor channel conditions. Optimizing by determining the best conditions for sending data packets is inherently opposed to using a preamble to aid recovery of troubled calls. Therefore, Applicants respectfully submit that there is no motivation to combine the teachings of Odenwalder with those of Chhedda and Pattampalli.

Applicants also submit that the Examiner's rejection is based on impermissible hindsight reconstruction since as noted above for claim 1, Chhedda and Pattampalli teach away from the proposed combination and the teachings of Odenwalder are also incompatible with the situation occurring during call recovery. Applicants respectfully submit that claim 7 is allowable.

Specification

Applicant provides herewith amendments to the specification. The amendments to the specification are made by presenting marked up replacement paragraphs which identify changes made relative to the immediate prior version.

The changes made are primarily typographical or grammatical in nature, or involve minor clarifications of awkward wordings.

Applicant believes these changes add no new matter to the application and are fully supported by the original disclosure.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: April 22, 2004

By: Roberta A. Young
Roberta A. Young, Reg. No. 53,818
(858) 658-5803

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-5787
Facsimile: (858) 658-2502